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AUTHOR Horne, Richard L.
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ABSTRACT

This newsletter issue reviews the educational and civil rights of children and youth with disabilities through the age of 21, with summaries of the Individuals with Disabilities Education Act (IDEA) and related federal legislation. Noted are unresolved problems in the reauthorization of IDEA and the permanent authorization of requirements mandating the Individualized Education Program (IEP) and procedural safeguards. The last 25 years of federal education laws and court cases are examined. The major provisions of Section 504 of the Rehabilitation Act of 1973, IDEA, and the Carl D. Perkins Vocational Education Act are summarized. A final section provides brief reviews of the Family Education Rights and Privacy Act, the Handicapped Children's Protection Act of 1986, the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986, the Developmental Disabilities and Bill of Rights Act Amendments of 1987, the Technology-Related Assistance for Individuals with Disabilities Act of 1988, and the Americans with Disabilities Act of 1990. A general discussion of state laws relating to children and youth with disabilities is also provided. A listing of 27 print resources and 15 organizations is attached. (Contains 22 references.) (DB)

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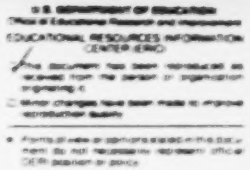
Interim Update, October 1996

NEWS DIGEST



# The Education of Children and Youth with Special Needs: What Do the Laws Say?

The National Information Center for Children and Youth with Disabilities (NICHCY) receives thousands of inquiries each year from families, educators, and others asking for information about federal laws regarding special education and related services, vocational education, and civil rights. The people who contact NICHCY are interested in the laws and their intent, the regulations, and their state's implementation of these laws.

This ***News Digest***—which is, in fact, an updated version of a ***News Digest*** published in 1991—focuses on the educational and civil rights of children and youth with disabilities through the age of 21. Thus, the primary focus of this issue is on the *Individuals with Disabilities Education Act (IDEA)*. The IDEA is the latest amendment to the *Education of the Handicapped Act (EHA)*, Public Law (P.L.) 94-142, which has guided the delivery of special education and related services since its passage in 1975. Additional federal laws, including *Section 504 of the Rehabilitation Act of 1973* (P.L. 93-112) and the *Carl D. Perkins Vocational Education Act* (P.L. 98-524), are discussed to help readers understand the full range of potential services and rights available to children and youth with disabilities and their families, for while the IDEA is the largest part of the picture, it is not the entire picture. This issue also discusses the application of state laws and provides resources to families and professionals on how to obtain additional information.

The Americans with Disabilities Act (ADA) is the most recent law barring discrimination against individuals with disabilities. However, the ADA does not directly address schools. Therefore, educators must apply ADA principles to school and training settings without direct guidance. Educators who already understand and comply with requirements in Section 504, Part B of IDEA, or special populations requirements in the Perkins Act are well on the way to complying with the ADA as well.

Only a brief discussion of each law is contained in the ***News Digest***, and it does not provide a legal interpretation of statutes. Those who need precise language are encouraged to refer directly to the public laws and relevant regulations. A resource list of organizations and a bibliography of useful readings are provided at the end of this ***News Digest*** for readers interested in obtaining further information on the laws and more precise interpretations.



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## *Attention !! The Laws Are Changing !!*

This ***News Digest*** was originally written and published in 1991, soon after the Individuals with Disabilities Education Act (IDEA) was passed to amend the Education of the Handicapped Act (EHA) (P.L. 94-142). Since that time, many of the laws described herein have been amended, including the IDEA, the Carl D. Perkins Vocational Education Act, and the Rehabilitation Act of 1973. In order to provide readers with the latest information on the major laws governing the rights of children and youth with special needs, NICHCY is pleased to offer this revision of the 1991 ***News Digest***. In addition to providing overviews of the laws as they have developed over the years and as they stand in fall 1996, this publication also includes a bibliography of current *resources* and a list of *organizations* that can provide further information about the laws.

*These overviews of the laws will provide readers with a foundation of knowledge about the educational rights of children and youth with special needs, as of fall 1996.*

*However, it is important to recognize that this information is always subject to change—depending on the status of reauthorization....*

However, this updated publication must be considered an interim update at best, due to unresolved problems in the reauthorization of the IDEA, the legal backbone of educational rights for children with disabilities. Reauthorization was scheduled for 1995 but was delayed due to heated debates over possible changes in the law. At the end of September 1996, the 104th Congress adjourned without reauthorizing the IDEA. When Congress reconvenes in January 1997, as the 105th Congress, the process of reauthorization will begin anew, with new committees discussing and debating how the legislation will be amended.

It is important to keep in mind that Part B of the IDEA, which mandates the Individualized Education Program (IEP) and procedural safeguards, is permanently authorized. Therefore, although reauthorization of IDEA has been delayed, states must continue to provide special education and related services to eligible children and youth with disabilities. The manner in which these services are to be provided will continue to be guided by the IDEA as it currently stands (P.L. 102-119), until such time as the Congress completes (and the President signs into law) amendments reauthorizing this important legislation. When reauthorization of IDEA occurs, this publication will be updated again to reflect whatever changes are made.

The overviews of the laws presented in this document will provide readers with a foundation of knowledge about the legal educational rights of children and youth with special needs, as of fall 1996. However, it is important to recognize that this information is always subject to change—depending on the status of reauthorization, not just of the IDEA but of other laws as well. Readers may wish to contact the Parent Training and Information (PTI) project in their state, their Congressional representatives, NICHCY, disability organizations, or state education agencies to find out the latest information on the laws and to express their views and concerns. As we await the changes that IDEA's reauthorization may bring, we hope that this interim update is useful to our readers.

## What Do the Laws Say About the Education of Children and Youth with Special Needs?

The first federal laws designed to assist individuals with disabilities date back to the early days of the nation. In 1798, the Fifth Congress passed the first federal law concerned with the care of persons with disabilities (Braddock, 1987). This law authorized a Marine Hospital Service to provide medical services to sick and disabled seamen. By 1912, this service became known as the Public Health Service. However, prior to World War II, there were relatively few federal laws authorizing special benefits for persons with disabilities. Those that did exist were intended to address the needs of war veterans with service-connected disabilities. This meant that, for most of our nation's history, schools were allowed to exclude—and often did exclude—certain children, especially those with disabilities. Since the 1960s, however, there has been a virtual avalanche of federal legislation that relates directly or indirectly to individuals with disabilities, particularly children and youth. The numerous court decisions rendered, and state and federal laws passed since the 1960s, now protect the rights of those with disabilities and guarantee that they receive a free and appropriate, publicly supported education.

There have been many heroes and heroines in this effort, most certainly the families of children with disabilities. The positive changes in the laws and the attitudes of the public toward those with disabilities would not have occurred without the active and persistent involvement of many dedicated people over the years. Today, people with disabilities have accomplished more than ever dreamed possible, due to increases in the number and quality of programs, better trained professionals, continuous research in education, information dissemination and technical assistance, and the collaboration between parents and professionals to obtain the best education possible for the nation's children and youth with disabilities.

As evidence of these changes, in 1994 over 5 million children and youth with disabilities received special education and related services under the **Individuals with Disabilities Education Act (IDEA)** (U.S. Department of Education, 1995). Federal efforts have also extended this right to the youngest of children—infants and toddlers. A survey conducted by Louis Harris and Associates (1989) for the International Center for the Disabled suggests that more children with disabilities appear to be receiving a far better education today than they were 10 to 12 years ago, and that parents are reasonably satisfied with their children's education. However, many families and professionals have little knowledge about the laws. According to this report, 61% of the parents surveyed knew little or nothing about their rights under both the **Education of the Handicapped Act (EHA)**, P.L. 94-142 (the predecessor to the IDEA), and **Section 504 of the Rehabilitation Act of 1973**, P.L. 93-112. Even a greater number of these parents—85%—were not aware of the vocational education law, the Carl D. Perkins Vocational Education Act of 1984, P.L. 98-524. Finally, a majority of both principals and teachers surveyed felt they had not had adequate training in special education.

Awareness of the laws that ensure equal opportunities to individuals with disabilities is vitally important for the following reasons:

- Knowledge of the language and intention of the laws empowers families to advocate more effectively for their children and strengthens their ability to participate fully as partners in their children's educational teams.
- As independence and self-sufficiency for individuals become increasingly important outcomes of special education, it is important that individuals with disabilities understand the laws and their implications for making decisions.
- Knowledge of the laws can assist professionals in understanding the entire service delivery system, ensure protection of civil rights, and improve collaboration with other agencies and families.
- Knowledge of the laws can help parents and professionals work together on behalf of children to make the equal education opportunity guaranteed by law a reality.

## How Federal Laws and Regulations Are Determined

It is helpful to know how laws are named or referred to. Whenever an Act is passed by the Congress and signed into law by the President, it is given a number, such as P.L. 94-142. "P.L." stands for **Public Law**. The first set of numbers means the session of Congress during which the law was passed. For example, the 94 means the 94th session of the U.S. Congress. The second set of numbers identifies what number the law was in the sequence of passage and enactment during that session.

Thus, the 142 means that this was the 142nd law that Congress passed and the President signed during the 94th session of Congress.

It is also important to understand that federal laws are often changed, or amended, regularly. Public Law 94-142, the Education for All Handicapped Children Act, has had several amendments since its passage in 1975. Therefore, it is important to keep up to date on these changes, as they often affect the delivery of special education, related services, and other programs in your state.

Laws passed by the Congress provide a general framework of policy related to a particular issue. Once a law is passed, Congress delegates the task of developing detailed regulations to guide the law's implementation to an administrative agency within the Executive Branch. Federal regulations are detailed in the **Code of Federal Regulations (CFR)**. The CFR interprets the law, discusses each point of a law, and further explains it. Copies of most federal regulations are available in the public library. The CFR is helpful in understanding the laws. State agencies must comply with federal laws and regulations.

At the federal level, special education is an area in which elaborate sets of regulations exist. The regulations for the Individuals with Disabilities Education Act, for example, spell out the procedures and programming that must be provided to children and youth with disabilities in order for states to receive federal funds. States may go beyond what is required in the regulations. For example, some states have broader definitions of which children are entitled to special education and, thus, may include gifted children in their special education programming.

## Early Federal Education Laws and Court Cases

Looking back over the last 25 years, it is clear that federal protection and guarantees of the educational rights of individuals with disabilities have been an evolving story. Figure 1 presents a graphic view of the history of special education legislation and relevant court cases. Direct federal support for the education of children with disabilities has its roots in the Elementary and Secondary Education Act of 1965 (ESEA), P.L. 89-10. The purpose of this law was to strengthen and improve educational quality and opportunity in the nation's elementary and secondary schools (DeStefano & Snauwaert, 1989). Eight months later, P.L. 89-10 was amended with the enactment of P.L. 89-313. Public Law 89-313, the Elementary and Secondary Education Act Amendments of 1965, authorized the first federal grant program specifically targeted for children and youth with disabilities. This law authorized grants to state agencies to educate children with disabilities in state-operated or state-supported schools and institutions. In 1966, P.L. 89-750, the Elementary and Secondary Education Act Amendments of 1966, established the first federal grant program for the education of children with disabilities at the local school level rather than state-operated schools and institutions. This section of the law became known as Title VI. In addition, P.L. 89-750 established the Bureau of Education for the Handicapped (BEH) to administer all Office of Education programs for children and youth with disabilities. BEH was charged with helping states to implement and monitor programs; support demonstration programs; conduct research and evaluate federally funded programs; provide financial support for training special educators, other teachers, support personnel, and parents; and support research, training, production, and distribution of educational media. Public Law 89-750 also established the National Advisory Council (NAC), which today is called the National Council on Disability.

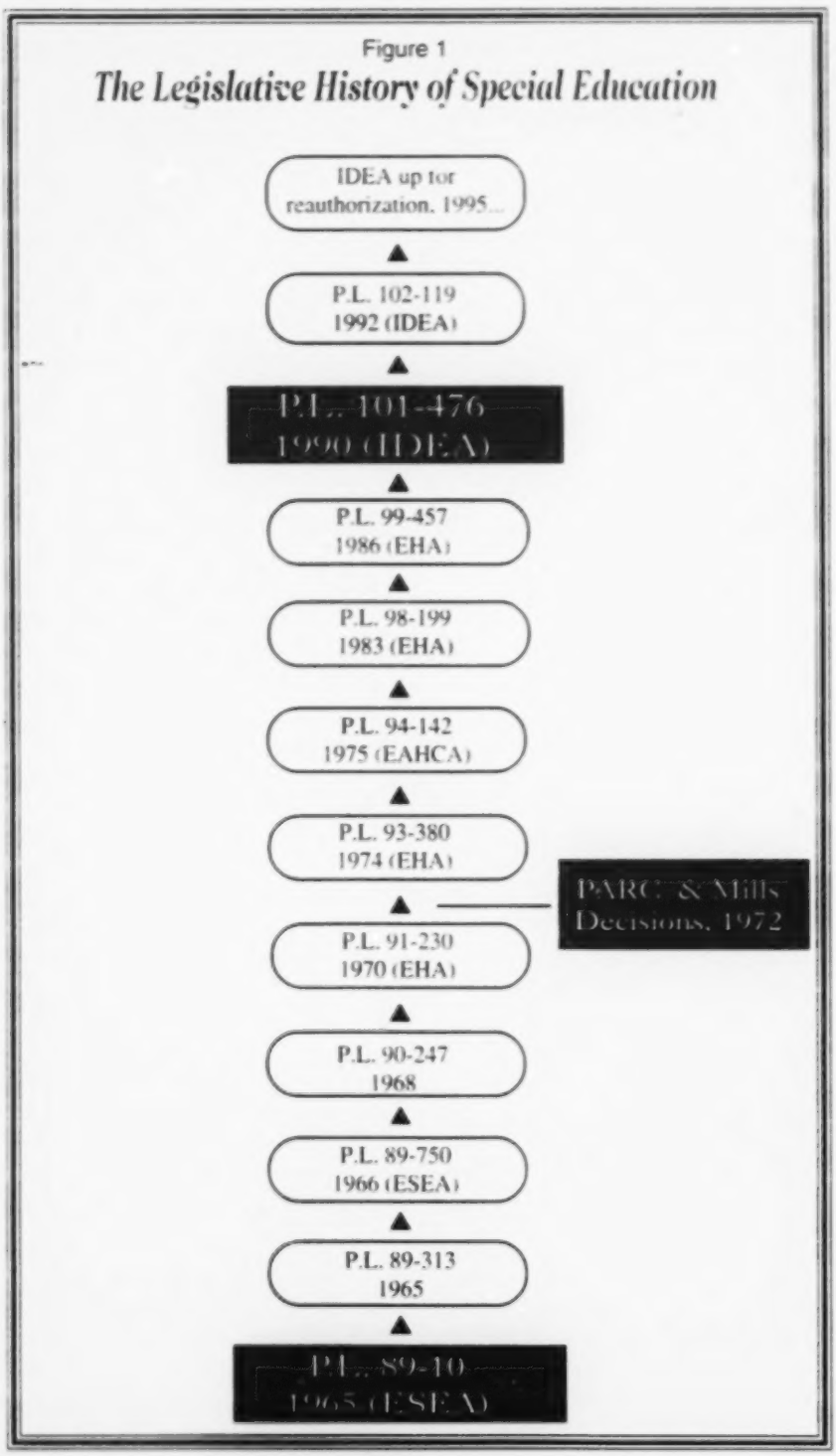
In 1968, P.L. 90-247, the Elementary and Secondary Education Act Amendments of 1968, became the final special education legislation enacted at the federal level in the 1960s. Public Law 90-247 established a set of programs that supplemented and supported the expansion and improvement of special education services. These programs later become known as "discretionary." These programs included funding for regional resource centers, centers and services for children with deaf-blindness, the expansion of instructional media programs, continued research in special education, and funds to establish a center to help improve the recruitment of education personnel and to disseminate information concerning education opportunities for children and youth with disabilities. (It was under this law that the roots of NICHCY were begun.)

Two years later, Congress passed the Elementary and Secondary Education Amendments of 1970, P.L. 91-230. Public Law 91-230 consolidated into one act a number of previously separate federal grant programs related to the education of children with disabilities, including Title VI of ESEA under P.L. 89-750. This new authorization, which became known as Part B, was titled the **Education of the Handicapped Act (EHA)** and was the precursor to the 1975 Act that would significantly expand the educational rights of children and youth with disabilities.

By the mid 1970s, several right-to-education cases were brought to court in states all over the country. Two precedent-setting cases involving the education of children with disabilities took place in Pennsylvania and the District of Columbia. In Pennsylvania, the Pennsylvania Association for Retarded Citizens (PARC) and 13 school-aged children with mental retardation brought a class action suit against the Commonwealth of Pennsylvania for its alleged failure to provide all of its school-aged children with mental retardation with a publicly supported education (*Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania*, 1972). The *PARC* suit was resolved by a consent agreement that specified that the state could not apply any law that would postpone, end, or deny children with mental retardation access to a publicly supported education. Furthermore, the agreement required the state to identify all school-aged children with mental retardation who were excluded from the public schools and to place them in a "free public program of education and training appropriate to their capacity." Finally, the agreement claimed that it was highly desirable to educate these children in programs most like those for nondisabled children.

Figure 1

***The Legislative History of Special Education***




In 1972, the parents and guardians of seven District of Columbia children brought a class action suit against the D.C. Board of Education on behalf of all out-of-school children with disabilities (*Mills v. Board of Education*, 1972). Unlike *PARC*, *Mills* was resolved by a judgment against the district school board. The result was a court order that the District of Columbia must provide all children with a disability, regardless of the severity of their disability, with a publicly supported education.

In 1974, P.L. 93-380, the Education Amendments of 1974, was passed. These amendments contained a variety of changes to existing federal education programs of the ESEA. One of the most important amendments was to Title VI of the ESEA, which was renamed as the Education of the Handicapped Act Amendments of 1974. This law required states to establish a timetable toward achieving full educational opportunity for all children with disabilities. The Act provided procedural safeguards for use in the identification, evaluation, and placement of children with disabili-

ties; mandated that such children be integrated into regular classes when possible; and required assurances that testing and evaluation materials be selected and administered on a nondiscriminatory basis. Even with P.L. 94-142 on the horizon, P.L. 93-380 was important because it began the focus, through a major federal program to the states, on fully educating all children with disabilities. Public Law 94-142, the Education for All Handicapped Children Act, was passed by Congress and signed into law by President Ford in 1975.

## Federal Laws Strengthen: The Core of Current Rights

The rights of individuals with disabilities were significantly strengthened with the passage of three federal laws and their periodic amendments. These laws were:

- P.L. 93-112—the Rehabilitation Act of 1973
- P.L. 94-142—the Education of All Handicapped Children Act of 1975, and
- P.L. 98-524—the Carl Perkins Vocational Education Act of 1984.

These three laws, and their subsequent amendments, form the core of current protection against discrimination and current guarantees of equal educational opportunity that individuals with disabilities have in our nation. Because these laws are so important to ensuring the rights of those with disabilities, you should become familiar with both the laws and their regulations. Each law is described in some detail below.

### P.L. 93-112, The Rehabilitation Act of 1973

This law is critical, because it addresses discrimination against persons with disabilities. The law has different sections, which refer to different areas of discrimination, as follows:

- Section 501: Employment of Individuals with Disabilities
- Section 502: Architectural and Transportation Barriers Compliance
- Section 503: Employment under Federal Contracts
- Section 504: Non-Discrimination in Programs or Activities Receiving Federal Financial Assistance
- Section 505: Non-Discrimination in Programs or Activities Conducted by Federal Agencies (In 1978, this provision was added by Public Law 95-602.)

To this day, Section 504 provides qualified individuals with disabilities with basic civil rights protection in programs and activities that receive federal financial assistance. The law states that "no otherwise qualified disabled individual in the United States. . .shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

To be eligible for the protections under Section 504, an individual must meet the definition of a person with a disability. This definition is "Any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." Major life activities include self-care, performing manual tasks, seeing, hearing, speaking, breathing, learning, and walking. Section 504 covers only those persons with a disability who would otherwise be qualified to participate and benefit from the programs or other activities receiving **federal** financial assistance.

The U.S. Department of Education's regulation implementing Section 504 applies to preschool, elementary, secondary, postsecondary, vocational, and other programs and activities that receive or benefit from federal financial assistance. This regulation is found at 34 Code of Federal Regulations (CFR); Part 104. The U.S. Department of Education's Section 504 regulation prohibits discrimination against children and youth with disabilitites in educational institutions receiving federal funds. Agencies that persist in acts of discrimination face the loss of federal funds.

Public Law 93-112 has been amended several times. In 1983, P.L. 98-221, the Rehabilitation Act Amendments of 1983, authorized several demonstration projects regarding the transition of youth with disabilities from school to work. In 1986, P.L. 99-506, the Rehabilitation Act Amendments of 1986, provided for programs in supported employment services for individuals with disabilities. The two most recent amendments are P.L 102-569, the Rehabilitation Act Amendments of 1992, and P.L. 103-73, the Rehabilitation Act Amendments of 1993. Regulations for these acts have not yet been proposed.

In order to receive technical assistance regarding the requirements of the U.S. Department of Education's Section 504 regulation, contact the U.S. Department of Education's Office of Civil Rights (OCR). OCR consists of administrative offices that are located at the U.S. Department of Education's

headquarters in Washington, D.C., and 10 regional offices around the country.

## P.L. 94-142, The Education for All Handicapped Children Act of 1975

This law was passed in 1975 and went into effect in October of 1977 when the regulations were finalized. This law grew out of and strengthened earlier acts of a similar name, including P.L. 91-230 and P.L. 93-380. Ballard, Ramirez, and Zantal-Weiner (1987) and DeStefano and Snauwaert (1989) summarize the major purposes of P.L. 94-142 as:

- To guarantee that a "free appropriate education," including special education and related service programming, is available to all children and youth with disabilities who require it.
- To ensure that the rights of children and youth with disabilities and their parents or guardians are protected (e.g., fairness, appropriateness, and due process in decision-making about providing special education and related services to children and youth with disabilities).
- To assess and ensure the effectiveness of special education at all levels of government.
- To financially assist the efforts of state and local governments in providing full educational opportunities to all children and youth with disabilities through the use of federal funds.

In 1983, through the **Education of the Handicapped Act Amendments of 1983** (P.L. 98-199), Congress amended, or changed, the law to expand incentives for preschool special education programs, early intervention, and transition programs. All programs under EHA became the responsibility of the Office of Special Education Programs (OSEP), which by this time had replaced the Bureau of Education for the Handicapped (BEH).

In 1986, EHA was again amended through P.L. 99-457, the **Education of the Handicapped Act Amendments of 1986**. One of the important outcomes of these amendments was that the age of eligibility for special education and related services for all children with disabilities was lowered to three, a change to be implemented by school year 1991–1992. The law also established the Handicapped Infants and Toddlers Program (Part H). As specified by law, this program is directed to the needs of children, from birth to their third birthday, who need early intervention services. In addition, under this program the infant or toddler's family may receive services that are needed to help them assist in the development of their child. State definitions of eligibility under this program vary.

In 1990, Congress passed the **Education of the Handicapped Act Amendments of 1990** (P.L. 101-476). The new amendments resulted in some significant changes. For example, the name of the law, the Education of the Handicapped Act (EHA), was changed to the **Individuals with Disabilities Education Act (IDEA).** Many of the discretionary programs authorized under the law were expanded. Some new discretionary programs, including special programs on transition, a new program to improve services for children and youth with serious emotional disturbance, and a research and information dissemination program on attention deficit disorder, were created. In addition, the law added transition services and assistive technology services as new definitions of special education services that must be included in a child's or youth's IEP. Also, rehabilitation counseling and social work services were included as related services under the law. Finally, the services and rights under this law were expanded to more fully include children with autism and traumatic brain injury.

The IDEA has been amended once since the amendment passed in 1990. The newest amendment, P.L. 102-119, primarily addressed the Part H program, now known as the Early Intervention Program for Infants and Toddlers with Disabilities.

The IDEA makes it possible for states and localities to receive federal funds to assist in the education of infants, toddlers, preschoolers, children, and youth with disabilities. Basically, in order to remain eligible for federal funds under the law, states must ensure that:

- All children and youth with disabilities, regardless of the severity of their disability, will receive a **Free Appropriate Public Education (FAPE)**—at public expense.
- Education of children and youth with disabilities will be based on a complete and individual evaluation and assessment of the specific, unique needs of each child.
- An **Individualized Education Program (IEP)**, or an Individualized Family Services Plan (IFSP), will be drawn up for every child or youth found eligible for special education or early intervention services, stating precisely what kinds of special education and related services, or the types of early intervention services, each infant, toddler, preschooler, child, or youth will receive.
- To the maximum extent appropriate, all children and youth with disabilities will be educated in the **regular education environment.**
- Children and youth receiving special education have the right to receive the **related services** necessary to benefit from special education instruction. Related services include:



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> ...transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training (C.F.R.: Title 34: Education: Part 300.16, 1993).

- Parents have the **right to participate** in every decision related to the identification, evaluation, and placement of their child or youth with a disability.
- **Parents** must give consent for any initial evaluation, assessment, or placement; be notified of any change in placement that may occur; be included, along with teachers, in conferences and meetings held to draw up individualized programs; and must approve these plans before they go into effect for the first time.
- The right of parents to challenge and appeal any decision related to the identification, evaluation, and placement, or any issue concerning the provision of FAPE, of their child is fully protected by clearly spelled-out **due process procedures.**
- Parents have the **right to confidentiality of information.** No one may see a child's records unless the parents give their written permission. (The exception to this is school personnel with legitimate educational interests.)

The IDEA was scheduled for reauthorization in 1995. As of fall 1996, it has not yet been reauthorized. Changes are being discussed. Readers who are interested in or concerned about the nature of Congressional discussions regarding IDEA may wish to contact the Parent Training and Information (PTI) project in their states, their Congressional representatives, NICHCY, disability organizations, or state education agencies, any of whom may have information to offer on the status of the ongoing amendment discussions.

As they currently stand, the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 strengthen each other in important areas. For example, they both:

- call for school systems to carry out a systematic search for every child with a disability in need of a public education,
- mandate a free and appropriate public education (FAPE) regardless of the nature and severity of an individual's disability,
- make it clear that education and related services must be provided at no cost to parents,
- have similar requirements to ensure that testing and evaluation of a child's needs are not based on a single testing instrument, and
- emphasize the importance of educating children and youth with disabilities with their nondisabled peers to the maximum extent appropriate.

The Education of the Handicapped Act, P.L. 94-142, and its amendments, P.L. 98- 199, P.L. 99-457, and now the Individuals with Disabilities Education Act, P.L. 101-476 and P.L. 102-119, represent the most important pieces of educational legislation in the history of educating children and youth with disabilities. As has been said, parents and professionals should make every effort to familiarize themselves with these laws. The regulations that cover the Individuals with Disabilities Education Act are also to be found in the Code of Federal Regulations. They are called **C.F.R.: Title 34: Education: Parts 300 to 399.** For just over $20, you can obtain the latest copy of the federal regulations implementing the IDEA by contacting the Superintendent of Documents, Attention: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to the Goverment Printing Office (GPO) at (202) 512-1800. Remember to state that you are requesting a copy of the Code of Federal Regulations: Title 34: Education: Parts 300-399.

## P.L. 98-524, The Vocational Education Act of 1984

This law is often referred to as the Carl D. Perkins Act, or the Perkins Act, and authorizes federal funds to support vocational education programs. One of the goals of the Perkins Act is to improve the access of those who either have been underserved in the past or who have greater-than-average educational needs. Under the Act, "special populations" includes those who have a disability, are disadvantaged, or have limited English proficiency. This law is particularly important, because it requires that vocational education be provided for students with disabilities. The regulations that cover this law are called **C.F.R.: Title 34: Education: Parts 400–499.**

The law states that individuals who are members of special populations (including individuals with disabilities) must be provided with equal access to recruitment, enrollment, and placement activities in vocational education. In addition, these individuals must be provided

with equal access to the full range of vocational education programs available to others, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practical, comprehensive guidance and counseling services. Under the law, vocational education planning should be coordinated among public agencies, including vocational education, special education, and the state vocational rehabilitation agencies. The provision of vocational education to youth with disabilities should be monitored to ensure that such education is consistent with objectives stated in the youth's IEP.

In 1990 and 1991, Congress amended this law by passing P.L. 101-392 and P.L. 102-103, respectively. The name of the law was changed to the **Carl D. Perkins Vocational and Applied Technology Education Act.** The purpose of this law is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population. This law concentrates resources on improving educational programs leading to the academic and occupational skill competencies needed to work in a technologically advanced society. The new law expands the term "special populations" to include individuals with disabilities, individuals who are economically and educationally disadvantaged (including foster children), individuals with limited English proficiency, individuals who participate in programs to eliminate sex bias, and those in correctional institutions. Public Law 102-103 is closely interwoven with the IDEA (P.L. 101-476) to guarantee full vocational education opportunities for youth with disabilities.

# Other Federal Laws Affecting Children and Youth with Disabilities

In addition to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Perkins Act, other federal laws provide civil rights and service programs for children and youth with disabilities. The following is a general overview of some of these important laws.

## P.L. 93-380, The Family Education Rights and Privacy Act (FERPA)

This law, often called the Buckley Amendment, gives parents of students under the age of 18, and students age 18 and over, the right to examine records kept in the student's personal file. The FERPA was passed in 1974 to cover all students, including those in postsecondary education. The major provisions of the Act are:

- Parents and eligible students have the right to inspect and review the student's educational records.
- Schools must have written permission from the parent or eligible student before releasing any information from a student's records. While a school may disclose education records without consent to others, such as other school officials, schools to which a student is transferring, certain government officials, and state and local authorities, the school must keep track, within the student's files, of the requests for these records. This information can be inspected by the parent or eligible student.
- Parents and eligible students have the right to have the records explained and interpreted by school officials.
- School officials may not destroy any education records if there is an outstanding request to inspect and review them.
- Parents and eligible students who believe that information in the education records is inaccurate or misleading may request that the records be amended. The parent or eligible student must be advised if the school decides that the records should not be amended, and has the right to a hearing.

Finally, each school district must give parents of students in attendance, or students age 18 or over, an annual notice to inform them of their rights under this law, and the right of parents or eligible students to file a complaint with the U.S. Department of Education.

## P.L. 99-372, The Handicapped Children's Protection Act of 1986

This law was enacted in 1986 "to amend the Education of the Handicapped Act to authorize the award of reasonable attorneys' fees to certain prevailing parties, to clarify the effect of the Education of the Handicapped Act on rights, procedures, and remedies under the other laws relating to the prohibition of discrimination, and for other purposes." Public Law 99-372:

- provides for reasonable attorneys' fees and costs to parents and guardians who prevail in administrative hearings or court when there is a dispute with a school system concerning their child's right to a free appropriate special education and related services;
- applies to all cases initiated after July 3, 1984; and
- requests the General Accounting Office to study the impact of the law and submit findings to Congress concerning the num-

ber of complaints, prevailing parties, amounts of attorneys' fees, and other data. [This study was completed in 1989. To receive a copy of the findings, call the U.S. General Accounting Office at (202) 512-6000 (V) or (301) 413-0006 (TTY) and ask for report GAO/HRD-90-22BR.]

## P.L. 99-401, The Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986

The Temporary Child Care for Handicapped Children and Crisis Nurseries Act was first introduced in 1985 as part of an omnibus child care bill and enacted by the 99th Congress in 1986. The Act was later incorporated into the Children's Justice and Assistance Act of 1986 (P.L. 99-401). The Act was most recently reauthorized and otherwise amended by the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992 (P.L. 102-295).

This law provides funding through competitive grants to states and U.S. territories to develop non-medical respite services (specialized temporary child care) for children with disabilities or chronic or terminal illnesses, and to develop crisis nursery services for children at risk of abuse and neglect. In addition to temporary child care, the programs created also offer an array of family support services or referral to such services.

In 1988, the U.S. Department of Health and Human Services awarded approximately $2 million to 16 states to develop and implement respite care services. In 1989, this law was amended by P.L. 101-127, The Children with Disabilities Temporary Care Reauthorization Act of 1989.

Since federal funding became available in 1988, a total of 175 crisis nursery and respite grants and 2 resource center grants (177 total) have been awarded to 47 states and one U.S. territory.

Additional information about these programs is available by contacting **ARCH National Resource Center for Crisis Nurseries and Respite Care Services.** See "Organizations" at the end of this publication for contact information.

## P.L. 100-146, The Developmental Disabilities and Bill of Rights Act Amendments of 1987

The original law was the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164). A Bill of Rights section for people with developmental disabilities was included in the 1987 amendments. Persons covered under these amendments included those with mental retardation, autism, cerebral palsy, and epilepsy. Formula grants (non-competitive, basic yearly allotments) were provided to states to establish Developmental Disabilities Councils to support the planning, coordination, and delivery of specialized services to persons with developmental disabilities. The law also authorized formula awards to support the establishment and operation of state protection and advocacy systems. Discretionary grants were awarded to support university-affiliated programs to provide interdisciplinary training in the field of developmental disabilities and to projects of national significance aimed at increasing the independence, productivity, and community integration of persons with developmental disabilities. The 1987 amendments also established a federal interagency committee to plan for and coordinate activities related to persons with developmental disabilities.

The Act was amended in 1990 (P.L. 101-496) and in 1994 (P.L. 103-230) by the Developmental Disabilities Assistance and Bill of Rights Act of 1994. The formula grants to support Councils in the states are for promoting, through systemic change, capacity-building, and advocacy activities, the development of a consumer and family-centered, comprehensive system and a coordinated array of culturally competent services, supports, and other assistance designed to achieve independence, productivity, and integration and inclusion into the community. Another key provision of these amendments was the definition of "developmental disability," which means:

> ...a severe, chronic disability of an individual 5 years of age or older that: (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age 22; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic sufficiency; and (e) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

The 1994 amendments make a specific exception to the age limitation for developmental disabilities, to include individuals from birth through age 5 who have substantial developmental delays or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

Furthermore, all programs, projects, and activities receiving assistance under the Act must be carried out in a manner consistent with a number of principles, including (1) that individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, given appropriate support; (2) that these individuals and their families are the primary decisionmakers regarding the services and supports to be received; and (3) that services, supports, and other assistance need to be provided in a manner that demonstrates respect for individual dignity, personal preference, and cultural differences.

### P.L. 100-407, The Technology-Related Assistance for Individuals with Disabilities Act of 1988

The primary purpose of this Act is to assist states in developing comprehensive, consumer-oriented programs of technology-related assistance, and to increase the availability of assistive technology to individuals with disabilities and their families. The Act was reauthorized in 1994, by P.L. 103-218. The reauthorization requires the development of a national classification system for assistive technology devices and services.

"Assistive technology device" is defined by the Act as "any item, piece of equipment, or product system whether acquired off the shelf, modified or customized that is used to increase, maintain, or improve functional capabilities of individuals with disabilities."

"Assistive technology services" are any services that directly assist an individual with a disability to select, acquire, or use an asssistive technology device. This includes evaluating the needs of the child, including a functional evaluation in the child's customary environment.

Title I of P.L. 100-407 provides states with funds to develop a consumer-responsive state system of assistive technology services. States receiving funds may develop or carry out any of the following: (1) model delivery systems; (2) statewide needs assessment; (3) support groups; (4) public awareness programs; (5) training and technical assistance; (6) access to related information; (7) interagency agreements; and (8) other activities necessary for developing, implementing, or evaluating a statewide

## *Programs for Protection and Advocacy (P&A) for Persons with Developmental Disabilities and Individuals with Mental Illness*

### P&A for Persons with Developmental Disabilities (PADD)

This program was created by the Developmental Disabilities Assistance and Bill of Rights Act of 1975. Protection and Advocacy agencies (P&As) are required by the Act to pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of individuals with developmental disabilities under all applicable federal and state laws.

The governor in each state designated an agency to be the P&A system and provided assurance that the system was and would remain independent of any service provider. The 1994 amendments to the DD Act expanded the system to include a Native American P&A program.

The Administration for Children, Youth and Families, Administration on Developmental Disabilities (ADD), administers the PADD program.

### P&A for Individuals with Mental Illness (PAIMI)

This program was established in 1986. Each state has a PAIMI program that receives funding from the National Center for Mental Health Services. Agencies are mandated to (1) protect and advocate for the rights of people with mental illness and (2) investigate reports of abuse and neglect in facilities that care for or treat individuals with mental illness. Agencies provide advocacy services or conduct investigations to address issues that arise during transportation or admissions to, the time of residency in, or 90 days after discharge from such facilities. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAIMI program.

The Substance Abuse and Mental Health Services Administration, Center for Mental Health Services (CMHS), administers the PAIMI program.

For more information about these programs and to locate the PADD or PAIMI program in your state or territory, contact the **National Association of Protection & Advocacy Systems (NAPAS)**, 900 Second Street, NE, Suite 211, Washington, DC 20002. Telephone: (202) 408-9514; (202) 408-9521 (TT).

service delivery system. This range of optional activities gives states flexibility in how to focus efforts and spend funds.

To find out what Technical Assistance Program is available in your state, contact the **Assistive Technology Funding and Systems Change Project of United Cerebral Palsy** (UCPA), or **RESNA.** See "Organizations" at the end of this publication for contact information.

### P.L. 101-336, The Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) was signed into law by President Bush on July 26, 1990. The central purpose of this Act is to extend to individuals with disabilities civil rights protections similar to those provided to individuals on the basis of race, sex, national origin, and religion. Based on the concepts of the Rehabilitation Act of 1973, the ADA guarantees equal opportunity for individuals with disabilities in employment, public accommodation, transportation, state and local government services, and telecommunications. The ADA is the most significant federal law ensuring the full civil rights of all individuals with disabilities.

Title II of the ADA prohibits discrimination on the basis of disability by state and local government entities. OCR is responsibile for enforcing Title II with respect to all programs, services, and regulatory activities relating to the operation of public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

Title II regulations are found at 28 Code of Federal Regulations (CFR): Part 35. For additional information and answers to questions regarding the ADA, contact the **ADA Regional Disability and Business Technical Assistance Center**. See "Organizations" at the end up this publication for contact information. For specific information on the requirements of Title II that are applicable to public school districts, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries, contact the Office of Civil Rights regional office that serves your state.

## State Laws Relating to Children and Youth with Disabilities

How states implement the requirements of federal laws is covered by the primary and basic source of law for the nation—the United States Constitution. Federal laws passed by Congress must be based on the provisions of the Constitution. State constitutions and laws may go beyond what is provided in the federal law, as long as there is no conflict between them, and as long as state laws do not address areas reserved to the federal government, such as providing for the nation's defense.

The major Constitutional provisions that are of importance to children and youth with disabilities are (a) those that provide for the spending of money to protect the general welfare, and (b) the 14th amendment, which provides that no states shall "deprive any person of life, liberty, or property, without the due process of law...nor deny...equal protection of the laws." It is important to remember that there is no constitutional provision requiring that the federal government provide education. The 10th amendment to the Constitution, states that "powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States...." Therefore, all states have provided for public education, either by state constitution or state law or both. States are required under the due process and equal protection clauses of the 14th amendment to provide education on an equal basis and to provide due process before denying equal educational programming.

As you can see, most laws providing for public education are generally state and local rather than federal. Although some educational programs, such as Head Start and special education, are highly regulated by the federal government, education is, for the most part, a state function. It is important to remember that most federal laws and regulations that provide for educational programming establish minimum standards that states must follow for the delivery of services and programs in order to receive federal funds. Quite often, federal laws give flexibility to the states in implementing the programs or services established with federal funds. Laws and regulations regarding civil rights, on the other hand, are much more firm and concrete.

Therefore, it is essential that you become familiar with your state laws and regulations. Write to your state department of education for a copy of your state special education law; its regulations; and recent amendments, policy decisions, or court decisions related to the education of children and youth with disabilities. The resources listed at the end of this **News Digest** will also tell you where to obtain more information about IDEA and other federal laws.

In addition, in order to receive federal funds for special education and related services under IDEA,

every three years the state must have approved state plans—to show that it intends to provide a free appropriate public education for all children and youth with disabilities. These plans must be made available to the public for review and comment before they are adopted and sent to Washington, D.C. Dates for review must be announced far enough in advance for parents and other interested persons to appear at hearings and express their views.

It is your right to see a copy of your state and local plans for educating children and youth with disabilities. For instance, you may need to know what your state's plan says about education for children with multiple disabilities or about children in private schools and institutions, or about vocational education.

Finally, it is important to remember that laws provide a framework for policy and that regulations provide the specific requirements for implementing the policy. Where there are differences, inconsistencies, or ambiguities in interpretation or in implementation, the judicial system is responsible for resolving these disputes. Often, court decisions lead to changes in the law or in regulations. It is interesting to note that laws are not made by various branches of the system (legislative, executive, and judicial) in a vacuum. Often, laws are made by one branch in response to developments in other arenas. State and federal law are frequently interactive in this process. The development of special education law is an excellent example. It is likely that interaction among the various branches of government at both the federal and state levels in the development of special education law and the civil rights of individuals with disabilities will continue for some time.

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# ORGANIZATIONS

**Alliance for Technology Access**—2175 East Francisco Boulevard, Suite L, San Rafael, CA 94901. Telephone: (415) 455-4575. E-mail: atafta@aol.com. URL: http://marin.org/npo/ata/

**Americans with Disabilities Act Regional Disability and Business Accommodation Center**—For information on legislation, rights, and resources, call 1-800-949-4232 (V/TT), which will automatically connect you to the regional office serving your state.

**ARCH National Resource Center for Crisis Nurseries and Respite Care Services**—Chapel Hill Outreach Project, 800 Eastowne Dr., Suite 105, Chapel Hill, NC 27514. Telephone: 1-800-473-1727; or (919) 490-5577. E-mail: hn4735@connectinc.com. URL: http://chtop.com/archbroc/htm

**Assistive Technology Funding and Systems Change Project of the United Cerebral Palsy Associations (UCPA)**—1660 L Street, NW, Suite 700, Washington, DC 20036. Telephone: 1-800-827-0093 (V); 1-800-833-8272 (TT). E-mail: ATFSCP@aol.com. URL: http://homepage.interaccess.com/~taad/atfscp.html

**Center for Law and Education**—197 Friend Street, 9th Floor, Boston, MA 02114. Telephone: (617) 371-1166. E-mail DC office: hn1669@handsnet.org; E-mail Boston office: hn0481@handsnet.org

**Clearinghouse on Disability Information**—Office of Special Education and Rehabilitative Services (OSERS), Room 3132, Switzer Building, 330 C Street SW, Washington, DC 20202-2524. Telephone: (202) 205-8241 (V/TT). URL: http://www.ed.gov

**Disability Rights Education and Defense Fund**—2212 Sixth Street, Berkeley, CA 94710. Telephone: (510) 644-2555 (V); (510) 644-2629 (TT). E-mail: dredfca@aol.com

**ERIC Clearinghouse on Disabilities and Gifted Education**—Council for Exceptional Children, 1920 Association Drive, Reston, VA 22091. Telephone: 1-800-328-0272. E-mail: ericec@cec.sped.org. URL:http://www.cec.sped.org/ericec.htm

**HEATH Resource Center**—(HEATH is the national clearinghouse on postsecondary education for individuals with disabilities)—One Dupont Circle, Suite 800, Washington, DC 20036-1193. Telephone: 1-800-544-3284 (V/TT). E-mail: heath@ace.nche.edu

**Judge David L. Bazelon Center for Mental Health Law**—1101 15th Street NW, Suite 1212, Washington, DC 20005. Telephone: (202) 467-5730 (V); (202) 467-4232 (TT). E-mail: hn1660@handsnet.org. URL: http://www.bazelon.org

**National Association of Protection and Advocacy Systems (NAPAS)**—900 Second Street N.E., Suite 211, Washington, DC 20002. Telephone: (202) 408-9514 (V); (202) 408-9521 (TT). E-mail: hn4537@handsnet.org

**National Center for Youth with Disabilities**—University of Minnesota, Box 721, 420 Delaware Street S.E., Minneapolis, MN 55455. Telephone: 1-800-333-6293; (612) 624-3939 (TT). E-mail: ncyd@gold.tc.umn.edu. URL: http://www.peds.umn.edu/centers/ncyd/

**National Clearinghouse on Family Support and Children's Mental Health**—Portland State University, P.O. Box 751, Portland, OR 97207-0751. Telephone: 1-800-628-1696 (V); (503) 725-4165 (TT).

**RESNA**—1700 N. Moore Street, Suite 1540, Arlington, VA 22209-1903. Telephone: (540) 542-6686 (V); (540) 524-6639 (TT). URL: http://www.resna.org/resna/reshome.htm

**Technical Assistance to Parent Programs (TAPP) Network**—Federation for Children with Special Needs, 95 Berkeley Street, Boston, MA 02116. Telephone: (617) 482-2915 (V/TT). E-mail: fcsinfo@fcsn.org. URL: http://www.fcsn.org/tapp/home.htm

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Project Director ..... Suzanne Ripley
Author ..... Richard L. Horne, Ed.D.
Editor ..... Lisa Küpper
Associate Editor ..... Mary Kate Conroy

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